

Memorandum

MIAMI-DADE
COUNTY

Date: January 22, 2008

To: Honorable Chairman Bruno A. Barreiro and
Members, Board of County Commissioners

Supplement to
Agenda Item No. 11(A)1

From: George M. Burgess
County Manager

Subject: Florida Marlins Ballpark Project Report - Draft Baseball Stadium Agreement and
County Funding Pledge

RECOMMENDATION

This supplemental item recommends that the Board of County Commissioners (the "Board") approve the accompanying Chair sponsored Resolution, Item 11A9, requesting the County Mayor or his designee to negotiate and finalize a Baseball Stadium Agreement ("BSA") among the County, the City of Miami (the "City") and the Florida Marlins, L.P. (the "Team") related to the development of a new ballpark for the Florida Marlins, subject to subsequent Board approval; and reaffirming the County's commitment to pledge a portion of projected available Convention Development Tax ("CDT") and Professional Sports Franchise Facilities Tax ("PST") for the development and construction of the ballpark. This supplemental item also provides an outline of the major parameters of the draft BSA.

SCOPE

While this item lies in Commission District 5, its scope is countywide in nature.

FISCAL IMPACT / FUNDING SOURCE

The fiscal impact and funding sources of consists of \$199 million of County tourist bed tax revenues. Specifically, the tourist bed tax funding includes \$60 million of funding from the CDT and \$139 million of funding from the PST. These tourist bed taxes are eligible funding sources pursuant to State law for the purpose of funding a stadium. Furthermore, the PST can only be used to fund debt service on bonds issued to cover the capital costs of a professional sports franchise facility. It is important to note that these tourist bed taxes cannot be used for general government funding purposes, such as social services, public safety, etc. In addition, item 5J on this agenda provides \$50 million of Building Better Communities General Obligation Bond funds to the project.

TRACK RECORD / MONITORING

The County Executive Office will be responsible for managing and monitoring this project.

BACKGROUND

Miami-Dade County has been actively pursuing and committed in its efforts to develop a new ballpark for the Florida Marlins and County residents for more than seven years. During this time we have evaluated numerous sites in multiple jurisdictions and have requested funding assistance from the State on several occasions.

As you are aware, the University of Miami's decision to leave the Orange Bowl and move its football program to Dolphin Stadium beginning next season has made the Orange Bowl site available for the development and construction of a ballpark for the Florida Marlins. The County, City, Team, and Major League Baseball (MLB) have been negotiating a Baseball Stadium Agreement (BSA) for some time now. The BSA is similar in many respects to the Memorandum of Understanding approved by the County, City and Team in March 2005 in that it sets forth the terms, conditions and obligations of the parties to the project. However, the BSA is a much more substantial agreement. It is a binding agreement with termination rights where the remedy afforded to the non-terminating parties will include reimbursement for out-of-pocket costs incurred not to exceed \$5 million as well as the right for the parties to recover damages

up to \$5 million from a party who breaches its representations or obligations under the agreement. As you know, the Marlins lease at Dolphin Stadium expires after the 2010 season. A binding agreement will provide a firm commitment from all parties to expeditiously move the project forward, which must be in place in order to complete the project in time for a 2011 opening. It will also facilitate the development and negotiations of the subsequent agreements that must be approved by the County, City and Team such as the Non-Relocation Agreement, Management Agreement and Construction Administration Agreement.

At the December 4, 2007 Board meeting (and December 6, 2007 Board carryover meeting), Board members requested that an action item be brought before the Board at its December 18, 2007 meeting. At this time, the BSA is still in draft form; however, County staff has reviewed and revised the BSA extensively. The Team and MLB are still reviewing the BSA and the City has not submitted its final comments. It is expected that the BSA will require further negotiations with the City, Team, and MLB. Attachment 1 to this report outlines major parameters of the draft BSA and the County's primary obligations (see Attachment 1).

BALLPARK PROJECT BUDGET AND FUNDING

The estimated cost of the ballpark at the Orange Bowl site for a 2011 opening is approximately \$515 million (not including \$10 million for demolition and infrastructure costs). When contemplating a ballpark at the Government Center site for a 2011 opening, the estimated cost was \$490 million. The estimated downtown ballpark cost allowed for a construction period of 34 months (May 2008 construction start date) and also had assumed savings (approximately \$3 million) by being able to cool the ballpark at a reduced cost by utilizing the County's chiller plant. These savings will not be realized at the Orange Bowl site. Furthermore, the biggest cause for the increased cost of the ballpark is due to a much shorter construction period, which has been reduced to 29 months (November 2008 construction start date). This requires the need to accelerate construction, which is estimated to cost approximately \$20 million. County and City staff have discussed the ballpark cost and estimated timeline with the Team, MLB, and the Team's architect. Staff feels that based on the information provided the estimated cost is reasonable. County staff has also reviewed the ballpark cost and timeline with the outside expertise of URS, which is working in a limited capacity for the County on the project. One of the main concerns that both staff and URS have is that a 29 month construction period is aggressive and any time that can be saved to start construction sooner would be to the benefit of all parties.

In regards to funding, you will note in the attached outline of the draft BSA that the level of Team funding has decreased. However, the Team's actual annual out-of-pocket contribution will not be reduced. In addition, the County's funding risk has been drastically reduced. This is explained further below. Previously, the Team's contribution was \$192 million (\$30 million in equity and \$162 million in team rent bonds).

At this time, as included in the draft BSA, the Team's contribution will be \$155 million and will be secured directly by the Team from a private financing or combination of private financing and cash. County staff and our outside financial consultant recommend this financing structure that requires the Team to privately finance its entire contribution as opposed to the County issuing \$162 million of team rent bonds. The primary reason for this alternative financing structure is due to the fact that it will completely eliminate the risk the County would assume if the County was to issue team rent bonds to be paid back by the Team. Under the County's previous agreement to issue the team rent bonds, the County was assured more security in the Team's rent payments, including the types of revenues the County would receive. The previous terms of the team rent bonds allowed the County to securitize contractually obligated team revenues, namely the local radio and cable broadcast contracts which are not driven by attendance. Furthermore, the County would have had a first lien on these revenues and such revenues would have gone directly into a lockbox held by a trustee on behalf of the County. This previous agreement was strong, secured with long-term revenues of a contractual nature and subject to a first lien, which made the

risk of payment default very remote and protected the County from risk that our general fund would ever be needed to cover a team rent shortfall.

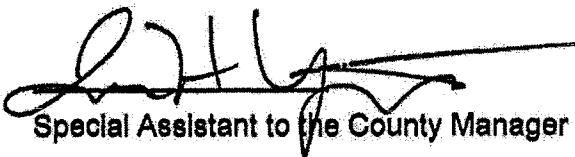
During recent negotiations, MLB advised the County that the team rent bond structure would have to be modified due to certain MLB internal team revenue sharing provisions as well as accounting principles that affect the capital treatment of payments from the Team to the County. Basically, MLB advised that the previous team rent structure would cause the Team's payments to the County to be treated as capital expenses and that this would severely limit the amount of revenue sharing monies the Team would receive from MLB to the extent that the overall economics of the deal would not be possible for the Team. The new mix of revenues pledged for repayment of the County debt would not include local broadcast revenues and would be comprised of shorter-term contractual revenues and revenues driven by attendance, such as food, beverage and merchandise sales. Clearly these are much different terms than those the County agreed to under our previous agreements with the Team, including the 2005 Memorandum of Understanding.

Given the realities of not being able to structure the team rent bonds in a manner that fully protects the County and limits the exposure to our general fund, having the Team privately finance its contribution in the amount of \$155 million should not be viewed as a negative change to the project. A private financing will still cost the Team the same amount it would have if the County was to issue team rent bonds. With a private financing, the Team will be faced with a much shorter financial term (approximately 20 years) and will not be able to secure financing rates as low as the County.

It should also be noted that the County is able to increase its contribution from the PST to help offset the reduction of the Team's contribution. As noted earlier, PST can only be used to pay the debt service on bonds issued to cover the capital costs of professional sports franchise facilities. The County has not increased its level of funding from CDT and the City has not increased its funding contribution to the ballpark. The \$50 million of General Obligation Bond funds is needed to make up for the state's \$30 million funding request that was denied and for the \$20 million in construction cost escalation due to the reduced construction period. Under the terms of any deal, staff would prefer for the Marlins to be directly responsible for financing its contribution so that the County's budget to appropriate debt capacity be preserved for other important County projects.

Finally, you may have recently heard about or seen renderings of the new proposed ballpark for the Tampa Rays. The design of this ballpark is intriguing to say the least, in particular the manner in which the roof will be designed and constructed. The roof will be made of a "sail" fabric, will protect fans from rain and cool the stadium by providing shade. The roof is retractable, but the outfield and side portions of the ballpark where fans do not sit are not completely enclosed. The cost of such a roof design and savings from not having to cool the entire ballpark are assumed to be much less than having a fully enclosed retractable roof ballpark. At this time, staff is researching the specifics of this roof design and its costs in order to see how this system could be considered for the ballpark at the Orange Bowl.

Attachment



Special Assistant to the County Manager

Attachment 1

OUTLINE OF DRAFT BASEBALL STADIUM AGREEMENT

The ballpark would be a first class Major League Baseball stadium at the Orange Bowl site owned by the County, having a retractable roof, a natural grass playing field, a capacity of approximately 37,000 seats, including approximately 3,000 club seats, approximately 60 private suites, 7,200 affordable seats, and concession, entertainment and retail areas, fixtures, furnishings, equipment, features and amenities comparable with other recently constructed Major League Baseball ballparks, including but not limited to San Diego, St. Louis, Philadelphia, Pittsburgh, and Milwaukee. The ballpark scheduled completion date is April 2011 based on a construction start date of no later than November 2008. The Team (or Stadium Developer, which is the Team Affiliate designated by the Team) will be responsible for the planning, design, development and construction of the ballpark

1. **Non-Relocation Agreement:** The Team shall enter into the Non-Relocation Agreement that will unconditionally require the Team to maintain its Major League Baseball franchise in the City of Miami for the term of the Management Agreement or the retirement of the County Bonds, the General Obligation Bonds and the City Bonds, whichever is later. The Non-Relocation Agreement shall require the Team to operate and maintain a Major League Baseball franchise with the Baseball Stadium as its home stadium and to play all of its regular season and post-season home games at the Baseball Stadium.
2. **Baseball Stadium Site:** The City shall convey title to the County, at no cost, the parcel(s) of land required for the construction of the ballpark by Warranty Deed free and clear of all liens and encumbrances. The City shall perform an environmental assessment and shall bear the cost of any environmental remediation necessary on the Baseball Stadium Site prior to its conveyance to the County. The land the City will convey to the County will only be the land required for the ballpark to be constructed (the footprint). The City will retain ownership of all other City parcels at the site.

The City shall perform, at no cost to the County, the Team or any Team Affiliate, the demolition of the Orange Bowl and removal of debris and any environmental remediation necessary.

3. **Construction Administration Agreement:** The County, the City and the Stadium Developer (Team Affiliate designated by the Team) shall enter into the Construction Administration Agreement. The Construction Administration Agreement shall contain the contractual provisions regarding each party's obligations and responsibilities relating to the Baseball Stadium. The Team and the County shall enter into an Assurance Agreement and the Assurance Agreement shall provide that the Team shall guarantee the payment and performance of all obligations of the Stadium Developer under the Construction Administration Agreement.
4. **Design and Construction Professionals:** The Construction Administration Agreement shall require the Stadium Developer to engage the Design and

Construction Professionals and the Construction Manager for the design of the Baseball Stadium.

Although the Team is paying all architectural and design fees of the Baseball Stadium, the Team agrees to provide in its contracts with the Design and Construction Professionals provisions requiring the Design and Construction Professionals to comply with the County's CBE-A/E program in the same manner as if the design was County rather than privately funded and to enforce such provisions.

The Stadium Developer shall competitively select a Florida licensed contractor to serve as the Construction Manager in accordance with State and local law. The Stadium Developer shall include in its contract with the Construction Manager provisions requiring compliance with State and local laws, including but not limited to, the County's CSBE small business programs, responsible wages and benefits, Community Workforce, Sustainable Building Program, IPSIG, bonding from the Stadium Developer and Construction Manager for the total cost of construction of the Baseball Stadium.

5. **Construction:** The Construction Administration Agreement shall require the Stadium Developer to form an administrative committee that includes representation from the County and the City (the "Project Coordination Team") to perform the following functions: (i) receive reports from the Design and Construction Professionals pertaining to the construction schedule for completion of Baseball Stadium, the Stadium Project Budget and any other aspects of the Baseball Stadium project; (ii) maintain clear lines of communication to facilitate a successful Baseball Stadium project; (iii) receive reports; and (iv) approve change orders that are generally consistent in all material respects with the approved Project Program Statement. The Construction Administration Agreement shall provide that all other change orders shall be subject to the written approval of the County and the City pursuant to the approval process detailed in the Construction Administration Agreement.

The Construction Administration Agreement shall include a detailed plan by which the County shall procure construction materials and equipment for the Baseball Stadium on a sales tax exempt basis pursuant to State law and in a manner that protects the reasonable financial interests of each party.

6. **Cost Overruns:** The Team shall be the guarantor of the Stadium Developer's obligation to pay any and all costs of planning, designing, acquiring, constructing and equipping the Baseball Stadium in excess of the total cost of the Baseball Stadium over the Stadium Project Budget, including payment of any and all costs for Claims, demands or causes of action by the architect, general contractor, subcontractors, trade contractors, suppliers and other parties, including attorneys' fees (trial and appellate) and defense costs (in the aggregate and as more fully described in the Construction Administration Agreement) but excluding incremental costs to the Baseball Stadium that may result from delays caused by the City because of its failure to meet the deadline set forth in the BSA. The County or the City, as the case may be, shall each be responsible for any incremental cost to the Baseball Stadium that may result from delays caused by it or from its failure to meet the deadline set forth in the BSA.

The Stadium Developer shall provide the County and the City at the time of execution of the Construction Administration Agreement with evidence that it has secured a dedicated credit facility in a form acceptable to the County and in the amount of at least \$20,000,000 that may be used only to pay for Baseball Stadium cost overruns.

7. **Public Infrastructure:** The Public Infrastructure work to be completed by the County or the City in connection with the Baseball Stadium and the party responsible for payment of all costs associated with each portion of the Public Infrastructure work is set forth in an exhibit to the BSA. The Construction Administration Agreement shall require the City and the County to design, construct, install and pay for the Public Infrastructure.
8. **Parking:** The City, the County and the Stadium Manager shall enter into a City Parking Agreement. The City Parking Agreement shall require the City on or before the Completion Date to identify at least 12,000 parking spaces within five-eighths of one mile from the Baseball Stadium and to construct, at its sole cost and expense, City Parking on the Entire Site to house approximately 6,000 of those parking spaces. The City Parking Agreement shall permit the Stadium Manager to purchase from the City the rights to all City Parking, to operate the City Parking as public parking facilities and to establish from time to time a market-based, fixed charge for their use. The City shall be entitled to all revenues from and shall be responsible for all expenses related to the City Parking as defined in the City Parking Agreement. The City Parking Agreement shall provide that the Team will be provided 250 parking spaces at all times for Team player, employee and visitor parking in a location to be determined by the Stadium Manager within the City Parking. The Team Reserved Parking Spaces shall be made available to the Team's authorized parkers without charge.

9. Stadium Project Budget

Construction and Design Costs	\$489,800,000
Furniture Fixtures & Equipment	4,200,000
Owner's Contingency	9,000,000
Site Work	12,000,000
Demolition, Site Prep & Infrastructure	<u>10,000,000</u>
Total Stadium Project Budget	\$525,000,000

10. Sources of Funds

Sources	Amount
Team Financing	155,000,000
County Funding	
- Convention Development Tax	60,000,000
- Professional Sports Franchise Facilities Tax	139,000,000
- General Obligation Bonds	50,000,000
Sub total	249,000,000
City Funding	
- Tourist Development Tax	48,000,000
- Convention Development Tax	60,000,000
- Miami Exhibition Authority Reserves	13,000,000
Sub total	121,000,000
Total Project Cost	\$525,000,000

11. **Team Funding:** The Team shall fund \$155,000,000 of the Stadium Project Budget by (i) directly paying soft costs that are included within the Stadium Project Budget and related to the Ballpark Stadium; and (ii) depositing the balance into the Team Account of the Stadium Project Construction Fund.
12. **County Funding:** The Construction Administration Agreement shall provide that the County shall issue and sell one or more series of taxable or tax-exempt bonds backed by the Convention Development Tax, the Professional Sports Facility Tax or a combination thereof ("County Bonds") in an aggregate amount sufficient (taking into account issuance costs, required reserves and funded interest cost during construction) to deposit \$199,000,000 of net proceeds into the County Account of the Stadium Project Construction Fund. The Construction Administration Agreement shall provide that the County, in its sole discretion, shall determine the details of the issuance of the County Bonds, including the use of capitalized interest.
13. **General Obligation Bonds:** The County shall use its best efforts to sell \$50,000,000 in general obligation bonds at par or with a premium at market rates in order to deposit \$50,000,000 of net proceeds from the Building Better Communities General Obligation Bond Program ("General Obligation Bonds") into the County Account of the Stadium Project Construction Fund. The Construction Administration Agreement shall provide that the County, in its sole discretion, shall determine the details of the issuance of the General Obligation Bonds, including the use of capitalized interest.
14. **City Funding:** The City shall issue and sell one or more series of taxable or tax-exempt bonds backed by the tourist development tax, the convention development tax, or a combination thereof ("City Bonds"), and shall remit to the Qualified Trustee an amount from the Miami Sports and Exhibition Authority Reserve Fund, in an aggregate amount sufficient (taking into account issuance costs, required reserves and funded interest during construction) to deposit \$121,000,000 of net proceeds into the City Account of the Stadium Project Construction Fund.

15. **Management Agreement:** The County and the Stadium Manager shall enter into the Management Agreement which shall set forth the terms for the operation, management and use of the Baseball Stadium. The Management Agreement shall grant the Stadium Manager the exclusive right, authority and responsibility to manage the Baseball Stadium on behalf of the County. The Management Agreement shall provide that the Stadium Manager's rights and responsibilities include, (i) arranging for the Team's use of the Baseball Stadium for Baseball Events; (ii) arranging for Other Events and any other lawful uses of the Baseball Stadium; (iii) entering into agreements pursuant to which third parties conduct events or otherwise use the Baseball Stadium for revenue producing purposes; and (iv) managing all operations of the Baseball Stadium and paying the costs thereof, including the cost of all off-duty services including police, fire and emergency personnel to be provided by the County, during all Baseball Events, Community Events and Other Events at the Baseball Stadium.
16. **Term:** The term of the Management Agreement shall commence upon its execution and delivery and, unless terminated in accordance with its terms, shall continue for until the later of (i) the 30th annual anniversary of the Completion Date of the Baseball Stadium or (ii) the business day following the date the last of the County Bonds, the General Obligation Bonds and the City Bonds are retired or mature, whichever is later.
17. **Community Events:** The Management Agreement shall provide that the County and the City have the right to use the Baseball Stadium for 12 community event days per year for amateur athletic, public service, or other non-profit events not including professional baseball games.
18. **Maintenance and Repairs - Operating Expenses:** The Management Agreement shall require the Stadium Manager to undertake and pay the costs of all Maintenance and Repairs. The Management Agreement shall also require the Stadium Manager to pay all expenses associated with the operation and maintenance of the Baseball Stadium and the Baseball Stadium Site, including, but not limited to, game day operations, security on the Baseball Stadium Site, utilities, custodial services, premiums for the insurance, and supplies and other consumable goods.
19. **Capital Improvements:** The Management Agreement shall permit the Stadium Manager to make such Capital Improvements that are required (i) by applicable governmental law, regulation or order, (ii) to keep the playing field, lighting and safety features of the Baseball Stadium in compliance with Baseball Rules and Regulations, (iii) to safeguard individuals or property in emergency situations, and (iv) to replace components of the Baseball Stadium and/or the Baseball Stadium Site at the end of their economic cycle as it deems necessary or appropriate subject to the prior written approval of the County which shall not be unreasonably withheld or delayed. The Management Agreement shall require the Stadium Manager, subject to County approval, to develop a capital expenditure plan that includes estimated capital improvements for each year and the estimated cost of these capital improvements during the term of the Management Agreement. The Management Agreement shall provide that the cost of such Capital Improvements shall be paid or reimbursed to the Stadium Manager from funds in the Capital Reserve Fund and that, to the extent that the funds are insufficient, the County, the City and the Stadium Manager shall each
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be responsible for one-third of the difference. Otherwise, the cost of Capital Improvements shall be paid by the Stadium Manager.

- 20. Capital Reserve Fund:** The Management Agreement shall provide for the creation of the Capital Reserve Fund and, commencing with the year of the opening of the Baseball Stadium, shall require annual contributions by the County, the City and the Team of \$1,500,000 (apportioned one-third from the County, one-third from the City, and one-third from the Team) into the Capital Reserve Fund.
- 21. Ownership of Team Revenues:** The Team shall own all revenues generated from or by reason of Baseball Events at the Baseball Stadium, including without limitation: the proceeds from the sale of tickets or other rights to admission; the proceeds from the sale or licensing of suites; the proceeds from the sale of seat licenses or other rights to purchase tickets or admission; all revenues derived from the sale or licensing of rights of any sort to televise, broadcast, transmit, record, advertise or promote in any manner the Baseball Events at the Baseball Stadium or any description or account of the Baseball Events at the Baseball Stadium; all proceeds from the sale at or from the Baseball Stadium of concessions, memorabilia, souvenirs, or other products and services; all marketing, advertising, promotional, naming and other revenues derived from or arising out of the Baseball Stadium or the Baseball Events held there or products, services, information or media content sold from there; all proceeds from assignments, leases or licenses of Baseball Stadium and all revenues from the rights to parking; provided, however, that Team Revenues do not include taxes or governmental charges or revenues from Community Events.
- 22. Community Benefit Obligations:** The Team acknowledges a civic responsibility to promote and contribute to charitable, educational and community organizations and other public works in South Florida. The Management Agreement shall require the Team to develop and deliver a strong and substantial community benefits package that shall include the following:
- a. The Team shall maintain, fund, and vigorously promote its not-for-profit Florida Marlins Community Foundation (the "Team Foundation") as well as the Team's own internal community relations efforts, which collectively are focused on promoting educational, athletic, health, social and community service programs with a particular focus on Miami-Dade County and the City of Miami in addition to other activities for South Florida's youth.
 - b. The Team shall endeavor to maximize benefits for (i) youth and other residents of South Florida, with a particular focus on Miami-Dade County and the City of Miami, and (ii) rebuilding youth baseball infrastructure through Major League Baseball's various affiliated charitable organizations and programs, such as: Major League Baseball Charities, Reviving Baseball in Inner Cities, Baseball Tomorrow Fund, Join the Major Leagues @ Your Library, Breaking Barriers, Baseball Assistance Team, Jackie Robinson Foundation, and Commissioner's Initiative for Kids.
 - c. The Team shall request and encourage its advertisers and sponsors to contribute to and support the Team Foundation.
 - d. The Team shall request and encourage its players and other Team personnel to support and participate in community activities through

personal appearances and other means, such as financial or other contributions to the Team Foundation or to other organizations that benefit youth and other residents of Miami-Dade County and the City of Miami as well as other organizations and youth in South Florida. The Team will work with its players, coaches and senior management to make at least 25 personal public appearances (counting no more than three appearances per event) per year in South Florida in support of education, youth sports, or other public service activities.

- e. The Team shall provide attractive and meaningful programs designed to keep Major League Baseball games affordable for youth and the elderly in South Florida. During each year the Team shall (i) make available at least 50,000 regular season tickets priced per ticket at no more than 75% of the full price at which such tickets are offered to the general public, and (ii) distribute at least 5,000 regular season tickets for free each year to appropriate Miami-Dade County charities that will make such tickets available to underprivileged youth accompanied by adult mentors.
- f. The Team shall provide 7,200 Affordable Seats (priced at no more than \$15 for the 2011 season)
- g. The Team shall participate in Major League Baseball's Diverse Business Partners Program.
- h. The County and the City shall be provided, at no cost to the County and City, (1) the use two private suites for all events at the Baseball Stadium; and (2) in the case of regular season baseball games, the County and City shall also be provided, at no cost, with related private suite tickets and parking plus 22 additional box seat tickets in the Baseball Stadium in mutually agreed upon locations on the Infield. In addition, in the case of any baseball games other than regular season games, the Team shall provide the County and City, at no cost, with the right to purchase such related private suite tickets and such additional 22 box seat tickets and in no event shall the County and City be treated less favorably with respect to the allocation of such ticket purchase rights than paid ticket holders of private suites or season box tickets in the Baseball Stadium
- i. Upon either a sale to a third party of a "control interest" (as defined in the Major League Baseball Constitution in Baseball Rules and Regulations) in the Team or a sale of the Team's Major League Baseball franchise in either case within the first ten years after the execution of this Agreement (other than following the death of the controlling owner), the Team will or will cause seller to pay to the County and the City, to be split on a pro-rata basis determined by each respective parties' contribution to the Baseball Stadium, an amount equal to the following percentage of the net proceeds (as such term is defined in the Management Agreement) of sale that are attributable to any increase in value of the franchise from the date of this Agreement (pro-rated in the case of a sale of the control interest):

<u>If the sale occurs in:</u>	<u>Percentage</u>
Year 1	10%
Year 2	9%
Year 3	7%
Year 4	6%
Year 5 to Year 10	5%

Such increase in value shall be based on an assumed value of the franchise of \$250,000,000 as of the date of this Agreement, which assumed value shall be increased to give effect to any additional capital funding to the Team Affiliates (net of distributions) and an imputed increase in value of 8% per annum from the date of this Agreement.

- J. The Team shall change its name to the Miami Marlins prior to the beginning of the 2011 season.

23. Execution and Delivery of Stadium Documents: The County, the City and the Team (with all requisite approvals from MLB) shall, as applicable, execute and deliver the Construction Administration Agreement, the Non-Relocation Agreement, the Assurance Agreement and the Management Agreement.

24. Termination Rights of County and City: By written notice to the City and the Team, the County may terminate this Agreement and be relieved of all obligations and liabilities under this Agreement (except with respect to any breaches by the County prior to termination) if the Team or the City breaches this Agreement in any material respect and has not cured such breach within 30 days after written notice from the County specifying the breach and demanding that it be corrected.

By written notice to the County and the Team, the City may terminate this Agreement and be relieved of all obligations and liabilities under this Agreement (except with respect to any breaches by the City prior to termination) if the Team or the County breaches this Agreement in any material respect and has not cured such breach within 30 days after written notice from the City specifying the breach and demanding that it be corrected.

The County has the right to terminate this Agreement, within seven (7) days after written notice to the Team and the City, for its own convenience. If the County exercises its right to terminate this Agreement for its convenience, the City and the Team shall each be entitled to recover damages from the County; provided, however, damages shall be limited to actual reasonable out of pocket costs incurred by the City or the Team to develop the Baseball Stadium at the Baseball Stadium Site provided the aggregate amount of the County's liability to the Team and the City shall not exceed \$5 million. In addition, out of pocket expenses shall not include lost profits, lost tax collections, lost opportunities for economic development, and the like.

25. Termination Rights of the Team: The Team may, by written notice to the County and the City, terminate this Agreement and be relieved of all obligations and liabilities under this Agreement (except with respect to any breaches by the Team prior to termination) if the County or the City breaches this Agreement in any material respect and has not cured that breach within 30 days after written notice from the Team specifying the breach and demanding that it be corrected.

26. Remedies: The County, the City and the Team agree that their respective remedies for any breach of or default under this Agreement shall be as set forth below:

- a. The County, the City or the Team, as the case may be, shall have the right to terminate this Agreement.

- b. The County, the City or the Team, as applicable, shall have the right to seek an injunction, mandamus, or other equitable relief in the nature of an injunction or mandamus, for violations of this Agreement.
- c. The County, the City and the Team shall each be entitled to recover damages from a party who breaches its representations or obligations under this Agreement; provided, however, that the damages shall be limited to each non-breaching parties' actual reasonable out-of-pocket costs incurred from the Effective Date forward to develop the Baseball Stadium at the Baseball Stadium Site; and provided further that the cumulative total amount of damages for which any party may be liable under this paragraph (c) to a particular other party shall not exceed \$5 million. In addition, damages shall not include punitive damages or consequential damages such as, for example, lost profits, lost tax collections, lost opportunities, and the like.
- d. The County, the City or the Team agree that the remedies set forth in paragraphs (a) through (c) shall be the sole and exclusive remedies for any breach of or default under this Agreement and hereby waive any and all other remedies, including, without limitation, any form of equitable relief and any and all claims to any form of compensatory damages, consequential damages, incidental damages and punitive damages other than the remedies allowed in paragraphs (a) through (c). The remedies in paragraphs (a) through (c) are cumulative.
- e. Nothing contained herein is intended to waive any right or remedy available to the County, the City or the Team under any of the other agreements contemplated under this Agreement, including, without limitation, the Construction Administration Agreement, the City Parking Agreement, the Management Agreement, the Assurance Agreement and the Non-Relocation Agreement.

27. Mediation: If the parties are unable to reach mutual agreement with respect to any matter requiring the parties' mutual agreement under this Agreement, within 10 days following the unmet deadline prescribed herein for such agreement, the parties shall submit such matter to mediation under the Mediation Procedures of the American Arbitration Association. Real estate development or construction matters shall be subject to the Construction Industry Mediation Procedures and other matters shall be subject to the Commercial Mediation Procedures.

It should be noted that while the above outlined County obligations and terms represent the major elements, they do not constitute all of the provisions in the draft BSA.